

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	

COMMENTS OF UNITED ONLINE, INC.

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SUMMARY

United Online recommends that the Commission not extend the scope of the requirements set out in the *Order*. In particular, VoIP providers that offer a one-way VoIP service should not be obligated to provide E911 or 911 services because there is no ANI associated with the call and consumers do not expect that such services will have E911 or 911 capabilities. For similar reasons, other VoIP services that users would not reasonably expect to have these capabilities, like those that require the use of a PC and specialized software, or require the user to both be logged on to the Internet and a VoIP application, should not be required to offer E911 or 911 services regardless of whether these services allow for two-way functionality. Consumers do not and should not have the expectation that these VoIP service offerings are robust enough to act as a consumer's only connection to emergency service personnel. Likewise, peer-to-peer VoIP services should not be subject to the dictates of the *Order*. Peer-to-peer VoIP services do not use North American Numbering Plan telephone numbers, do not intersect with the PSTN, and the users of such services do not have a reasonable expectation that they are able to dial 911 in the case of an emergency.

United Online does not support regulatory mandates that would require VoIP services to be automatically capable of providing location information by June 1, 2006. Prior to regulating a solution into existence, the Commission should work with the industry and allow competitive market forces to deliver such technology. Market forces are more effective in spurring technological innovation and would likely deliver multiple solutions to address differing needs. Additionally, the Commission should not establish a deadline without understanding what is currently technically possible. Many of the proposed solutions proffered by a number of parties are reliant on GPS technology. GPS is of limited utility indoors and in urban areas where the location information is not granular enough to locate the caller. Further, for VoIP services that will not be

offered through terminal adapters, it would be infeasible to install GPS chips on the preexisting base of computers, PDAs and similar devices that allow for the use of VoIP services. Instead, the Commission should work closely with the industry to ensure that open standards are adopted and that solutions are available across multiple platforms like Linux, Macintosh and Windows.

Similarly, the Commission should allow the industry to develop E911 and 911 performance standards. The various companies involved in the provision of VoIP services and in enabling E911 or 911 services are in the best position to determine reasonable performance standards. The Commission should not adopt timeframes applicable solely to VoIP providers for updating registered location information, as there are a number of factors at play in updating and verifying location information. Customer-provided addresses must be validated with the MSAG and often times this requires manual intervention. Should the Commission adopt performance standards, such standards should be applicable only to facilities-based VoIP providers as such companies can at least potentially control the timing of updates to registered location information. However, should the Commission adopt performance standards that are applicable to non-facilities-based VoIP providers, the Commission should adopt two standards: one for pre-validated location information and another for location information that has not already been verified against the MSAG.

United Online does not support the adoption of additional reporting requirements. Interconnected VoIP providers have already provided the Commission with significant information pursuant to the Enforcement Bureau's Public Notice and will do so again on November 28, 2005. Instead, the Commission should allow VoIP providers to focus their efforts on customer notification and implementation issues in order to meet the November 28, 2005 deadline.

It is critical for the Commission to ensure that VoIP providers are subject to uniform rules due to the interstate nature of VoIP services. It is also important for the Commission to ensure that VoIP providers do not become subject to discriminatory E911 or 911 funding requirements. The Commission should work with states, VoIP providers and PSAPs to establish IP-enabled PSAPs in conformity with NENA's ongoing efforts to establish an I3 standard that would vastly improve the delivery of emergency services.

United Online does not object to becoming subject to privacy regulations that are currently applicable to telecommunications carriers. The Company understands that in providing VoIP services it will have access to sensitive information about its customers. However, the Commission should not subject VoIP providers to privacy safeguards that exceed those currently in place for telecommunications carriers.

Finally, United Online supports making emergency services accessible for people with disabilities. In terms of how to make such services available, United Online does not believe it serves the public interest simply to graft on requirements that exist in the wireline telephony world to VoIP services. Instead, United Online believes the focus in this area should be in making PSAPs IP-enabled so that disabled users can access emergency services using their existing hardware and software.

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COMMENTS OF UNITED ONLINE, INC.

I. INTRODUCTION

United Online, Inc. (“United Online”), through its undersigned counsel, respectfully provides these comments on the Commission’s notice of proposed rulemaking (“NPRM” or “Notice”) in the above-captioned proceedings. United Online recommends that the Commission not expand the scope of the Voice over Internet Protocol (“VoIP”) E911 Order¹ (“*Order*”) to one-way VoIP services, peer-to-peer VoIP services, or two-way VoIP services that require the use of a PC and a software application. United Online also recommends that the Commission not attempt to regulate into existence an automatic location solution for VoIP services; instead, the Commission should allow the industry to develop performance standards for updating Registered Location information. United Online does not believe additional reporting requirements should be adopted at this time since there are significant reporting requirements already in place.² While United Online believes that states have an important role to play in working with the industry to

¹ *IP-Enabled Services*, WC Docket 04-36, *E911 Requirements for IP-Enabled Service Providers*, WC Docket 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116 (released June 3, 2005).

² Public Notice, *Enforcement Bureau Provides Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning the July 29, 2005 Subscriber Notification Deadlines*, WC Docket 04-346, WC Docket 05-196, DA -5-2085 (rel. July 26, 2005) at p. 2 (“*Enforcement Bureau Notice*”); *Order*, ¶ 50 (requiring providers to submit letters detailing compliance no later than 120 days from the effective date of the *Order*, November 28, 2005).

ensure the efficient and effective delivery of emergency services, it cautions the Commission to safeguard against the establishment of barriers to market entry and to ensure that there is regulatory uniformity throughout the Nation due to the interstate nature of VoIP services. United Online recognizes the Commission's concern with regard to privacy and does not object to the application of the same privacy regulations that exist for telecommunications carriers. Finally, United Online believes that it is important for people with disabilities to have access to emergency services when using VoIP services and proposes that the best way for this to be accomplished is to transition to IP-enabled public safety answering points ("PSAPs") in conformity with the National Emergency Number Association ("NENA") work on an I3 standard.

United Online provides consumer Internet subscription services, including dialup Internet access, premium e-mail, personal web hosting and community-based networking, through brands such as NetZero, Juno and Classmates. United Online intends soon to introduce three initial VoIP service products under its NetZero brand: (1) a peer-to-peer VoIP service; (2) an outbound-only service that only allows for the termination of traffic on the PSTN; and (3) a product that will allow for both inbound and outbound calling, including termination of traffic over the PSTN. Unlike some popular VoIP services, a NetZero VoIP customer must access the service through a general purpose computer, such as a laptop or a desktop PC, and a software program. None of the three initial products, as currently planned, will use a terminal adapter, nor will they provide for the attachment of traditional telephone equipment,³ although the scope of the initial product set may be extended in future releases.

³ It is possible that sophisticated computer users could configure their computer in a manner that would allow for the use of devices that are similar to traditional telephony equipment such as a handset device. However, such equipment still would have to be attached to a computer. Further, users will have to have their PCs powered on and the relevant VoIP application launched.

NetZero's initial VoIP services, as currently conceived, will be a natural extension of the existing online consumer communications it offers such as email and instant messaging. For all of these communications capabilities the consumer must actively use the PC to access the various communication interfaces. In other words, NetZero's VoIP services will be supplemental to, rather than a replacement for, traditional telephone services. In order to make use of United Online's VoIP service, the customer must turn on their computer, wait for it to boot, log on to the Internet utilizing their user identification and password, and then enter a second user identification and password to launch the VoIP software client application.

The *First Report and Order* ("Order") in this proceeding makes clear that the Commission's long standing criteria for determining when a nascent service should be subject to the Commission's E911 framework continue to apply.³ Thus, a fundamental question raised in the Notice, whether other VoIP services should be subject to the Commission's E911 rules, requires analysis under that same four-part test.

II. THE COMMISSION SHOULD REFRAIN FROM EXPANDING THE SCOPE OF E911 SERVICE OBLIGATIONS BEYOND THOSE ALREADY ADOPTED IN THE *FIRST REPORT AND ORDER*

The Commission's test for evaluating whether new services should be required to comply with the E911 rules has withstood rapid changes in technology and remains central to the Commission's analysis here. This standard evaluates:

- 1) Whether a service is a real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services; 2) If customers using the service or device have a reasonable expectation of access to 911 and enhanced 911 services; 3) Whether the service competes with traditional CMRS or wireline

³ See *Order*, ¶ 24, n. 78.

local exchange service; and 4) Whether it is technically and operationally feasible for the service or device to support E911.⁴

Application of these criteria to additional VoIP services inevitably leads to the conclusion that the Commission should not extend its 911 or E911, or similar obligations, to services beyond those encompassed in the *Order*.

A. The Commission's E911 Obligations, Or Similar Obligations, Should Not Be Extended to One-Way VoIP Services

There is no need to extend the E911 obligations beyond two-way interconnected VoIP providers.⁵ Extending the E911 obligations to *bona fide* one-way services would stifle technological innovation and consumer choice while doing little if anything to advance the Commission's interest in furthering public safety. Under the Commission's four-part E911 test, extending obligations to these one-way services is not necessary.

The one-way VoIP service is neither designed to, nor will it compete with, traditional wireline or CMRS service.⁶ As described above,⁷ United Online's initial VoIP service offerings will require customers to launch the application to obtain access to the Internet and provide their user name and password – and then obtain access to the VoIP application by providing a separate password. As such, the service offered by United Online is meant to complement web surfing and similar Internet-based applications.

Further, the service will not provide a return-call capability. Users of the one-way calling service will not have a unique Automatic Number Identification (“ANI”) associated with the calls they place. Because the customers cannot receive inbound calls they have no need for a

⁴ *Order* ¶ 19, n.58; *see also* ¶ 24, n.78.

⁵ Nor would it serve the public interest to extend E-911 obligations to peer-to-peer services regardless of whether such services allow for two-way communications. *See infra*, section I.B.

⁶ *Supra* n. 2.

⁷ *See supra*, Section I.

unique inbound telephone number, and the company will not provide such a number. Customers that purchase a service that only permits them to *make* calls, have no expectation that in the event they need emergency services, an emergency services operator would have the ability to call them back — because the service is only outbound and does not accept incoming calls from the PSTN. Because there is no inbound service available, there is no ANI information that would be sent to the public safety answering point (“PSAP”) when placing a 911 call. The outbound calls in such a service are not placed using a “telephone number.” Thus, there is no number with which to associate a registered location or ALI. Nor is use of pseudo-ANI an alternative, since there is no “number” with which to associate the pseudo-ANI. Thus, it is not technically feasible for an outbound service provider to offer ANI or ALI, which are key components of E911.

It follows then, that NetZero’s customers, and other consumers of one-way VoIP services, do not have a reasonable expectation of access to 911 and E911.⁸ Consumers of these unique services are sufficiently experienced with Internet access and Internet applications to recognize that there are important differences between services provided over the Internet as opposed to legacy communications services. From a policy perspective, the Commission should ensure that it does not embrace a regulatory rubric that is not in accord with marketplace realities and acts to change consumer expectations.

Consumer expectations are also molded because the services here differ in important ways from “always on” VoIP services that are available from other VoIP providers. Consumers would not reasonably rely on the one-way service described in these comments to provide 911 or E911 service due to all the steps required to initiate the service. Users of United Online’s VoIP service must have their computer on, must have logged on to their Internet connection, and must

⁸ *Supra* n. 2. United Online will clearly inform its customers of the 911 and E911 limitations associated with their service offering in the terms of service and during the sign up process so as not create any unreasonable expectations as to the ability of the service to offer access to emergency services.

have launched the VoIP application before they can place a call. The plain fact of the matter is that even if such services did provide emergency access, they should never replace traditional wireline, CMRS, or “always-on” VoIP services that do not require the use of both a PC and a software application due to the lack of immediate, real-time, two-way access to emergency personnel. Faced with an emergency, consumers should not depend on a service that requires logging on to the Internet, launching a separate application, keying in usernames and passwords, and then dialing for emergency assistance. However, should such services be required to offer 911 and E911 services, the Commission may create an *unreasonable* expectation that such services are robust alternatives to existing 911 and E911 services.

B. The Commission’s E911 Obligations Should Not Be Extended to VoIP Services that Require the Use of a PC and a Software Application

Where customers subscribe to a VoIP service, including two-way services, marketed for use as a secondary line or as a complement to other online services, the Commission’s four part test suggests an E911 requirement would be inappropriate. First, there is no reasonable expectation that the service will include emergency dialing similar to the traditional 911 and E911 associated with wireline telephony. Second, United Online is not marketing the service as a replacement for a primary line service and it would be cumbersome for consumers to use the product as a primary line replacement. All of United Online’s initial VoIP service offering will require users to utilize a computer and a software application in order to make use of the VoIP service. The lack of immediate access to emergency personnel is self-evident to consumers due to the multiple steps required in order to make use of the service. Further, the limitations of the VoIP service – such as its unavailability if there is an electrical outage or if there is network congestion – are also readily apparent since the service *requires* the use of a PC and a software application. Finally, the VoIP Internet application, as offered by United Online, does not allow

for the connection of traditional telephone devices without the consumer separately seeking and configuring hardware from a third party manufacturer that will ultimately have to be connected to the computer.

United Online's VoIP customers are not going to react to an emergency by running to their computer, and dialing 911 using the touchtone keypad generated by the software application and displayed on the computer screen. This, of course, assumes they are already logged on to both their ISP account and the VoIP application. While United Online aims to make accessing the Internet as easy as possible for its customers, the reality is this process still takes much longer than placing an ordinary call to a 911 dispatcher. Under these conditions, "[r]easonable consumers will not rely on the United Online PC-dependent and software-based service to provide E-911 functionality."⁹ As a result the Commission should not conclude that these VoIP services require E911 compliance because the services are not local exchange replacement and consumers of such services are unlikely to expect that 911 or E911 is dependable or reliable when a PC and a software application are required in order to gain access to emergency services. Imposition of E911 or 911 service mandates on such services would serve no useful purpose and would only serve as a barrier to further innovation in consumer services.

C. The Commission's E911 Obligations Should Not Be Extended to Peer-to-Peer VoIP Services

The *Order* implicitly recognizes that providers of peer-to-peer VoIP services should not be obligated to provide 911 or E911 calling capability.¹⁰ The *Notice*, however, asks whether the E911 obligations should be imposed on other VoIP services.¹¹ United Online urges the Commission to make explicit that its E911 rules for interconnected VoIP shall not be applied to peer-to-

⁹ United Online Ex Parte, WC Docket 04-36, (filed May 12, 2005).

¹⁰ See *Order*, ¶ 24; see also *id.* n. 72.

¹¹ Notice ¶ 58.

peer services, in part because such a requirement would not comport with the Commission's traditional standard for determining whether a service should be subject to E911 requirements.¹²

Peer-to-peer services, by their definition do not interconnect with the public switched network. Instead, they allow for private communication among users, using unique identifiers that are not North American Numbering Plan telephone numbers and do not resemble telephone numbers.¹³ Because peer-to-peer services do not use ordinary telephone numbers, there is no reasonable expectation that service will allow callers to dial 911 and reach emergency services. It would be unreasonable for consumers to expect the same service that does not allow them to call their best friend's wireline telephone number, to enable calls to the local emergency services. Further, it would be unreasonable to expect that such service would allow the emergency dispatcher to see a call back number, because there is no such number. Since no telephone number is used and there is no ANI associated with peer-to-peer calls, it would be technically infeasible for providers to comply with the E911 rules.

Extending E-911 requirements to peer-to-peer VoIP services would stifle innovation and reduce consumer benefits. There are VoIP providers in the marketplace today, like *pulver.com* and Skype, that offer peer-to-peer VoIP services for free to their users. Mandating that peer-to-peer VoIP services offer 911 functionality would impose significant costs on providers that wish to offer such services. The likely result will be for many providers to exit the marketplace to the detriment of both innovation and consumers. While United Online understands that the *Order* does not apply to peer-to-peer services, the Commission should make such a conclusion explicit in any future order it issues in these proceedings.

¹² See *supra* n. 2.

¹³ See e.g. *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*. 19 FCC Rcd 3307, ¶ 5 (2004).

III. THE COMMISSION SHOULD WORK WITH THE INDUSTRY TO DEVELOP STANDARDS FOR THE AUTOMATIC DELIVERY OF CUSTOMER LOCATION INFORMATION

The Commission should avoid imposing burdensome regulation on the development of new location technology. To the extent the Commission plays any role in encouraging the private sector to develop technological solutions to permit VoIP subscribers to have their location detected “automatically,” the agency should ensure that it does not interfere with the development of market-based solutions to this current technology hurdle. The market for VoIP services is competitive, with many competitors offering a variety of products. In such a competitive market, it is inevitable that providers will seek to offer a superior consumer VoIP service, such as one that allows the user to update their registered location without manual intervention. The Commission does not need to impose deadlines or mandate specific solutions. Rather the industry, in conjunction with public safety organizations, should continue their efforts to develop IP-based E911 solutions that capture the advantages of an IP-enabled network.

The Commission should, of course, monitor the development and deployment of such technology, to ensure that whatever technology is developed becomes available at a reasonable price to all service providers in order to ensure robust competition in the industry. To the extent, however, that the Commission determines that such a requirement is necessary, United Online urges the Commission to work closely with the industry prior to adopting any deadlines and technical standards that would be utilized to provide such functionality.

The Notice asks whether there are any existing technological solutions available to address the automatic location tracking of VoIP services. While United Online is generally familiar with *proposed* solutions, the Company is equally aware of the shortcomings associated with such proposals. For example, a number of parties have suggested the use of GPS chips and associated technology to determine a consumer’s physical location automatically. This proposed solution is

extremely limited in its effectiveness as GPS chips do not work well indoors and do not provide enough location specificity to be useful in densely populated metropolitan areas. It is difficult to convert accurately the geographic X,Y coordinates generated by GPS to a valid street address. Further, for software based VoIP applications, GPS chips would have to be embedded in all devices that make use of such software such as laptops, home PCs and other devices. Given the large installed base of equipment, GPS functionality would be extremely limited.

United Online believes that the solutions that are ultimately developed should be available at a reasonable cost and usable on all devices (not just terminal adapters, but also PCs, PDAs, etc.) and on common operating systems (Macintosh, Windows, Linux, etc.). As providers initiate more “mobile” VoIP services that allow subscribers to use Wi-Fi links to make VoIP calls, the demand for this technology will foster the development and deployment of this technology better than mere regulation.

The Commission must also ensure that VoIP providers are granted access to essential elements of the E911 infrastructure such as selective routers, the Automatic Location Information database and other components so that VoIP providers have the ability to develop and implement an E911 solution that works for their particular service offering. By opening network infrastructure that is controlled by monopoly providers of telephone service, the Commission would introduce competition to the provision of emergency services allowing market forces to operate and result in innovation and greatly enhancing the delivery of emergency services.

For these reasons, a requirement that “all terminal adapters or other equipment used in the provision of interconnected VoIP services sold as of June 1, 2006, to be capable of providing location information automatically, whether embedded in other equipment or sold to customers as a separate device,” would be poor policy. It would dampen investment and adoption of VoIP services, particularly given that the nomadic features have proven captivating for many custom-

ers. Additionally, it is a requirement that has no basis in what is possible. The Commission should avoid establishing, as it has done in the wireless context, a regulatory goal line that will require continual calibration when industry and technology prove unable to keep up with the demands of regulators. Typically, government is slow to adapt to rapidly changing technology. In this instance, the Commission should let technology set the pace. United Online believes that the Commission should not set any deadline, and certainly not June 2006, as it seems unlikely that any potential solution will be available ubiquitously to all customers by June 1, 2006. Instead, any such deadline should only be imposed when it is clear that reasonable and cost effective solutions are available on a non-proprietary basis and at a reasonable price. Should the Commission still impose such deadlines, the regulatory obligations must apply broadly to all service providers involved in the delivery of emergency services and not be limited to VoIP providers.

IV. THE COMMISSION SHOULD ALLOW THE INDUSTRY TO DEVELOP E911 ENHANCEMENTS RATHER THAN IMPOSE ARBITRARY OBLIGATIONS

United Online recommends that the Commission proceed cautiously in adopting specific regulations that impose mandates on VoIP providers within a specific timeframe. Instead, the Commission should actively work with the industry to determine what types of enhancements are practical and what a reasonable timeframe would be for implementing modifications. It is critical for the Commission to understand that VoIP providers must work in conjunction with a number of other parties in order to deliver E911 services. ILECs, third-party contractors like Intrado, CLECs, and PSAPs all have important roles to play in the delivery of emergency services. By focusing regulations solely on VoIP providers, the Commission ignores the essential roles played by parties that have no obligation to engage in any activities by virtue of the *Order*.

A. The Commission Should Not Adopt Performance Standards Regarding the Length of Time Between When a User Updates Registered Location Information and When the Provider Acts On It

VoIP providers should not be required to process updates of Registered Location information on an immediate basis; instead, the Commission should continue to permit providers to have some reasonable period of time to process the data internally, transmit that data to external service providers or vendors (if applicable), and appropriately verify the location information. Further, if the Commission mandates certain timeframes, it removes the incentive of participants to use faster response time (and even true automatic location identification) as a manner of differentiating service.

The Commission should avoid imposing a performance standard on updating customers' Registered Locations because such registrations frequently require manual intervention. Because there is no uniform convention for the addressing format within Master Street Address Guide ("MSAG"), there are frequently inconsistencies between the address provided by the customer and the format of the MSAG.¹⁴ For instance, if the MSAG for a particular jurisdiction requires the use of "Aven." as the abbreviation of avenue and the subscriber's address is entered as "Ave." or "Avenue," there will be no match. In order to ensure the proper functioning of E911 (the passing of ALI), the conflict between the subscriber's listed address and the particular conventions of the relevant MSAG must be resolved. These discrepancies also appear frequently in rural areas, where street names do not match the postal address, and in new housing developments. Resolving these address conflicts is a critical component to ensuring that customers receive the E911 service they expect. Because manual intervention is often needed to meet this objective, it would be imprudent to assign a performance standard that could not be met.

¹⁴ The MSAG database is a consolidation of MSAG databases of each emergency response area. Thus one county could have an address format different than a neighboring county.

If the Commission nonetheless imposes performance standards on VoIP providers, such requirements should only apply to those interconnected VoIP providers that own their own facilities and E911 infrastructure. Companies that do not own or control broadband networks, trunks, switches, or other facilities used in the provision of VoIP services, rely extensively on the services of vendors that own and control such facilities and thus provide the inputs necessary for the interconnected VoIP provider to offer E911. These companies, through their ownership of such facilities, are capable of controlling their performance in updating Registered Location information and processing database updates. Other companies, such as United Online, that rely on third party vendors, are at the mercy of such vendors including, in many cases, the incumbent LECs.

Further, third party vendors that work with VoIP providers to provide an E-911 service should also be subject to any performance standards adopted by the Commission. Contractual remedies are insufficient to guarantee that VoIP providers are able to meet any performance standards adopted by the Commission. Third party vendors are already refusing to certify or to enter into contractual arrangements that would require them to comply with the dictates of the *Order*. There is no reason to believe that they would behave any differently if asked by VoIP providers to commit to certain performance standards.

Assuming, *arguendo*, that the Commission does adopt performance standards applicable to non-facilities-based VoIP providers, the standard should distinguish between the Registered Location information that a user initially provides at the time of registration and Registered Location information that a user may subsequently update. For example, for those services that United Online may offer in the future that are subject to the *Order*, United Online plans to allow customers to “pre-register” a certain number of Registered Locations where they intend to use the company’s service. Thus, a United Online customer may choose to pre-register their home,

their work and their summer home, for example. Accordingly, when the customer initiates service and submits these locations, United Online will verify each location with the MSAG and work with the customer to resolve any discrepancies that may arise in the verification process. When the subscriber notifies the company that he or she is moving to another pre-registered location, the only lapse between notification and activation of that location is the time necessary for the ALI databases to receive the updated location. To the extent the Commission imposes a performance standard for updates to Registered Location information, the Commission should have two standards; one for the provider's verification of the Registered Location (recognizing that frequent manual intervention is involved) and a separate standard applicable to updates to the ALI database.

B. The Requirements of the Order Should Not Apply Where a User's Registered Location is Not Associated with a Street Address

The Commission must also recognize that there are other factors that impede the ability of VoIP providers to offer E911 services. Specifically, any requirements pertaining to Registered Location should not apply when the user's Registered Location is not associated with a postal-verifiable street address because it is currently not technologically feasible to provide standard E911 services without such a street address. VoIP providers need a postal-verifiable street address to compare to the MSAG in order to enter a valid database entry for E911 purposes. Where customers lack such address information, appropriate data cannot be entered into the databases utilized for E911 services and such customers will not (nor should not) expect to have E911 capability when they dial emergency services. For these same reasons, the Commission's rules should not apply to "wireless" VoIP services since the physical location and the registered location of the caller will not be the same.

C. The Commission Should Not Impose Any Obligations on Interconnected VoIP Providers in Geographic Areas Served By PSAPs That Are Not Connected To a Selective Router.

The Order clearly provided that VoIP providers should not be required to provide call back and location information in areas where a PSAP or other appropriate emergency authority lacks the capability to receive or utilize location or call back information.¹⁵ The Commission correctly reasoned that few calls would be placed in such areas, citing NENA's estimate that 93% of counties with 911 also have E911. Further, the Commission's wireless rules do not require CMRS providers to offer E911 capability where the PSAP or other emergency authority is unable to receive such information.¹⁶ It makes little sense to require any provider to offer E911 capability where consumers would be unable to benefit from that capability. Such a requirement would do little to advance the interest of public safety while imposing a significant burden on investment and innovation in VoIP services, contrary to the fundamental goals of the Act.

Nor is there a need for the Commission to require interconnected VoIP providers to create redundant E911 systems, such as requiring redundant trunks to each Selective Router or requiring that multiple Selective Routers be able to route VoIP calls to each PSAP. First, VoIP providers lack the control over Selective Routers to provide redundancy through the use of multiple routers. The *Order* recognized that Selective Routers are part of the "Wireline E911 Network" and are typically "implemented, operated, and maintained by a subset of incumbent LECs."¹⁷ Nor is such a requirement consistent with the Commission's rules for other technologies. The Commission has never imposed such an intrusive obligation on any service provider. The imposition of such regulations would not only be arbitrary but also conflict with the funda-

¹⁵ *Order*, ¶ 41.

¹⁶ 47 C.F.R. § 20.18(j)(1).

¹⁷ *Order*, ¶ 14.

mental purpose of the Act, namely promoting a deregulatory path towards telecommunications competition by encouraging investment and innovation. Imposing such onerous regulation on VoIP providers, when no symmetrical obligations exist for telecommunications carriers is a blatantly protectionist measure that is patently unlawful. The significant increased costs that would be imposed on interconnected VoIP providers would inevitably discourage new providers from entering the market, deter investment in improving existing service, and force many providers to simply exit the market.

Additionally, the Commission should not impose additional or more restrictive customer notification or affirmative acknowledgement requirements. Because the Commission already requires providers to disconnect those customers that do not acknowledge having read and understood the providers notice, United Online is unsure what additional acknowledgement requirements the Commission could impose.¹⁸ Further, the *Order's* customer notification requirements are sufficient to educate subscribers as to the capabilities and limitations of the 911 or E911 service available through interconnected VoIP services.

V. THE COMMISSION SHOULD NOT ADOPT ADDITIONAL REPORTING REQUIREMENTS

There is no justification for imposing additional reporting obligations beyond those already adopted in the Order, on VoIP providers. Further, a requirement that VoIP providers submit reports to the Commission regarding the progress on developing ways to locate automatically a user who dials 911, would be wasteful and duplicative. Presumably, many providers would retain the same vendors, and it is these vendors that possess the best information regarding development of new and innovative location technology. It would be a waste of VoIP providers' resources to obtain reports from vendors and then submit such reports to the Commission.

¹⁸ *Enforcement Bureau Notice*, at p. 2.

Additionally, it would strain the Commission's resources, as staff would be required to review a flurry of duplicative reports, many of which would likely include information from the vendors shared in common. Thus, it would make little, if any, sense to impose additional reporting requirements with respect to location identification technology.

The reports required pursuant to the *Order* and the Enforcement Bureau's Public Notice should provide the Commission with the information it needs to assess the industry's progress in tackling the substantial challenges posed by the *Order* and deployment of 911 and E911 capabilities over VoIP. United Online finds it hard to justify imposing additional reporting requirements. The Commission should keep the industry focused on notification — providing the necessary disclosures, obtaining acknowledgements, and on implementation — meeting the Commission's "aggressive" timetable for establishing E911 VoIP services. The Commission need not adopt additional reporting obligations, because it will receive information from providers through the reports already required — the notice reports filed on August 10, 2005 – and the implementation reports due in November.¹⁹

VI. THE COMMISSION MUST ENSURE THAT STATES ARE NOT ABLE TO ERECT BARRIERS TO MARKET ENTRY

While the Commission correctly determined in the *Vonage Order* that VoIP is interstate service, the Commission should recognize the role states play in providing emergency services. However, whatever role states play in the regulation of VoIP E911, that role should not permit states to erect additional barriers to market entry, undermine the uniformity of the *Order's*

¹⁹ The FCC can obtain information regarding technological developments directly from the vendors (such as Intrado) that are implementing the technical solutions.

national rules, or otherwise circumvent those rules. To allow State regulation of VoIP beyond such limits would be inconsistent with the *Vonage Order*.²⁰

The Commission should also exercise its control over regulation of interstate VoIP services to clarify that states may not impose 911 funding obligations on VoIP providers that place a disproportionate burden on VoIP compared to wireline and wireless users. While more consumers are adopting VoIP services, VoIP remains a nascent service when compared to traditional wireline and wireless services. It follows then that given the limited number of VoIP subscribers nationwide, VoIP providers should bear a relatively small fraction of the funding for 911 and E911. In other words, the Commission should ensure that, when states impose 911 funding obligations on VoIP providers, they do on an even-handed and proportional basis that is appropriate to each provider's use of the states' 911 infrastructure.

Finally, interconnected VoIP providers, states and the Commission should work cooperatively together to ensure a timely upgrade of the PSAPs to enable implementation of the NENA I3 solution, which will enable interconnected VoIP providers to send all types of valuable information regarding the 911 caller to the PSAPs. A concerted effort to implement timely upgrades will only enhance public safety.

VII. THE COMMISSION SHOULD NOT ADOPT CUSTOMER PRIVACY PROTECTIONS IN EXCESS OF THOSE THAT APPLY TO TELECOMMUNICATIONS CARRIERS

United Online recognizes that as a communications services provider, it has access to sensitive customer information. In addition, the company recognizes that as consumers add VoIP services to the services already received from United Online, they must provide additional sensitive information, namely a physical address. United Online's companies, as ISPs, web

²⁰ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004).

hosting providers or community based networking providers, are not obligated to comply with the Commission's customer proprietary network information ("CPNI") rules. However, to the extent the government has imposed privacy requirements in the online arena, United Online complies with those requirements. While United Online believes it is not necessary for the Commission to export the full panoply of CPNI regulations to interconnected VoIP providers, United Online would not object if it were subject to reasonable privacy requirements. While interconnected VoIP services do not constitute a "telecommunications" service, the privacy protections applicable to wireline and wireless telecommunications carriers may be a reasonable proxy for what should be applicable to interconnected VoIP service providers. However, the Commission should be careful not to impose more restrictive requirements on VoIP than those already established for telecommunications carriers.

VIII. ADDITIONAL REGULATION MANDATING SPECIFIC ACCESS FOR PERSONS WITH DISABILITIES IS NOT CURRENTLY NEEDED

United Online supports the Commission's efforts to monitor industry efforts to make VoIP and other broadband-based services more accessible to person with disabilities. Thus, the company supports any effort to enable disabled persons to use VoIP services for placing calls to a PSAP. Nonetheless, the reality is that it will take significant resources, in terms of time and financial commitment, to develop and implement such solutions. While United Online supports the goal of making VoIP 911 services more accessible to disabled persons, it is concerned about who should bear the cost associated with implementing the necessary technology to allow such access and the timing of any technological mandates. Rather than proceed headfirst into regulation, the Commission should encourage industry and the disabled community to work together to develop and implement the necessary solutions.

Further, the Commission should consider whether the public interest might be better served if the resources needed to develop a TTY type solution for use with interconnected VoIP 911 were instead devoted to developing I3 compliant solutions, as I3 envisions enhancements that would particularly benefit disabled persons using 911. For instance, the conventional wisdom is that I3 will allow PSAPs to obtain medical information and other critical data when they receive 911 calls regardless of the ability of the caller to convey that information to the emergency operator. Additionally, an IP-enabled PSAP would be able to receive the information currently provided through TTY technology allowing disabled callers to use the software of their choice in order to communicate with PSAPs. Accelerating the upgrade of the PSAPs to support I3 solutions is far more important and will be far more beneficial than trying to develop a retrofitted VoIP 911 TTY service.

IX. CONCLUSION

United Online supports the Commission's efforts to promote public safety and is committed to providing its customers E911 services where the provision of service is in line with customer expectations. Remaining consistent with the four-part standard the Commission first articulated in 1994, the Commission should now be clear and refrain from imposing E911 obligations on genuine one way services, two-way services that require the use of a PC and a software application, and peer-to-peer services that clearly do not satisfy the standard.

With respect to other issues raised in the Notice, the Commission should permit the industry and emergency services groups to develop E911 enhancements rather than impose arbitrary obligations; should ensure that states do not exceed their authority and erect barriers to market entry and should strive to make sure the obligations imposed on nascent VoIP services, are at a minimum no more restrictive than those requirements imposed on carriers.

Respectfully submitted,

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